IN THE MATTER OF THE ARBITRATION BETWEEN

LAW ENFORCEMENT LABOR SERVICES, INC., LOCAL 227,	)	MINNESOTA BUREAU OF MEDIATION SERVICES CASE NO. 07-PN-0300
Union,	)	
and	)	
THE CITY OF BEMIDJI,	)	DECISION AND AWARD OF ARBITRATOR
Employer.	)	

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On June 7, 2007, in Bemidji, Minnesota, a hearing was held before Thomas P. Gallagher, Arbitrator, who was selected by the parties under the provisions of the Minnesota Public Employment Labor Relations Act ("PELRA") to resolve collective bargaining issues about which the parties are at impasse. Post-hearing briefs were received by the arbitrator on June 21, 2007.

BACKGROUND

The City of Bemidji, Minnesota (sometimes, the "Employer" or the "City"), is situated in north central Minnesota. In 2000, its population was about 11,900, and in 2007, its population is about 13,100. The City's Police Department (the "Department") has thirty-three employees. The Union is the collective bargaining representative of employees of the Department in two bargaining units. One of those bargaining units includes the Department's eighteen full-time Police Officers (the "Patrol Unit") and the other, the Department's five full-time Police Sergeants (the "Sergeants' Unit").

Thirty-two of the Employer's employees are not represented by a union. Six employees are represented by a local affiliate of the International Association of Fire Fighters (the "IAFF"). Thirty-one employees who work in the Employer's Public Works Department are represented by a local affiliate of the International Union of Operating Engineers (the "IUOE"). Two full-time employees and twelve part-time employees who work in the Employer's liquor store are represented by a local affiliate of the United Food and Commercial Workers (the "UFCW").

The Union and the Employer are parties to a labor agreement covering the Sergeants' Unit, which has a stated duration from January 1, 2004, through December 31, 2006. Because they have not yet agreed to all of the terms of a new labor agreement, they continue to operate under the terms of that 2004-06 labor agreement, which I may sometimes refer to as the "current labor agreement." They have successfully negotiated some of the terms of their new labor agreement, but have reached impasse about several bargaining issues, described hereafter. In this proceeding, they seek to resolve those issues in arbitration, using the arbitration procedures established by PELRA.

On January 19, 2007, the Minnesota Bureau of Mediation Services certified that the parties were at impasse with respect to thirteen collective bargaining issues that are to be resolved in this arbitration proceeding. I refer to these issues by the following titles:

Issue 1. Duration of the Agreement.
Issue 2. Wages for 2007.
Issue 3. Wages for 2008.
Issue 4. Wages for 2009.
Issue 5. Employer's Benefit Contribution for 2007.
Issue 6. Employer's Benefit Contribution for 2008.
Issue 7. Employer's Benefit Contribution for 2009.
Issue 8. Uniforms - Allowance for 2007.
Issue 9. Uniforms - Allowance for 2008.
Issue 10. Uniforms - Allowance for 2009.
Issue 11. Uniforms - Furnish In Kind Rather Than Monetary Allowance.
Issue 12. Uniforms - Ammunition: Amend Section 15.2.
Issue 13. Compensation for Stand-By Time.

ISSUE 1: DURATION OF THE AGREEMENT

Article XXVIII of the current labor agreement provides:

> This Agreement shall be effective as of January 1, 2004, and shall remain in full force and effect until the thirty-first day of December, 2006.

The Union's Position.

The Union proposes that the new labor agreement have a duration of two years, from January 1, 2007, through December 31, 2008.

The Employer's Position.

The Employer proposes that the new labor agreement have a duration of three years, from January 1, 2007, through December 31, 2009.

Decision and Award.

The Union makes the following arguments in support of its position. History supports a two-year agreement. Since the Union began to represent the Sergeants in 1997, the parties have had two-year agreements three times and a one-year agreement once. Only the most recent agreement, the 2004-06 labor agreement has been a three-year agreement. Similarly, with respect to the Patrol Unit, since 1987, the parties have had six two-year agreements and one one-year agreement. Only the three most recent agreements have been three-year agreements.

In addition, the Union argues that, for 2009, there is little information available about contract settlements covering Police Sergeants in possibly comparable Minnesota cities, thus limiting the use of external comparison as a factor in determining 2009 wages and benefits. The Union presented evidence showing that, of twenty possibly comparable Minnesota cities, eighteen had settled for 2007 and two had not, eleven had settled for 2008 and nine had not and only three had settled for 2009, while seventeen had not.

The Union notes that both parties have new chief negotiators this year, thus creating the possibility of ending a history of past contentious bargaining. The Union argues that a two-year agreement will bring the negotiators back to bargaining sooner and thereby improve the likelihood that they will develop a good relationship.

The Employer makes the following arguments. Recent history favors a three-year duration. The Patrol Unit has had three successive three-year agreements, and the last agreement covering this unit was a three-year agreement. The IUOE Unit and the UFCW Unit have agreed to three-year contracts, covering calendar years 2007 through 2009, as proposed here. The Employer is trying to obtain agreement to the same term for the IAFF Unit and the Patrol Unit, and its goal is to achieve uniformity in the duration of its labor agreements and attendant stability in its relations with the unions representing its employees.

Though the Employer concedes that there is little information available for 2009 relating to external comparisons, it urges that the 3% general wage increase it proposes for that year will, nevertheless, be approximately what the settlements in other cities will average.

I award a two-year contract duration. In most circumstances, the longer three-year duration would be preferable -- to provide the parties with a longer period of stability, free of the pressures of bargaining. In the present case, however, the shorter duration is indicated -- because of the lack of information about external wage comparisons in 2009, and because of uncertainty about the 2009 cost of health insurance, which costs, as I describe below, have been volatile and have risen substantially in recent years.

ISSUE 2: WAGES FOR 2007
ISSUE 3: WAGES FOR 2008

Appendix A of the current labor agreement establishes the following monthly wage rates for members of the bargaining unit as of January 1, 2006 -- the rate they are being paid until an award issues in this proceeding:

Start	$3,570.80
Step 1 (after six (6) months)	3,738.49
Step 2 (after eighteen (18) months)	3,912.42
Step 3 (after thirty (30) months)	4,096.26
Step 4 (after forty-two (42) months)	4,288.83

The Union's Position.

The Union proposes that, for 2007, the wage rates established by the current labor agreement for calendar year 2006 be increased by 6.5% and that, for 2008, the wage rates thus established be increased by an additional 6.5%.

The Employer's Position.

The Employer proposes that, for 2007, the wages rates established by the current labor agreement for calendar year 2006 be increased by 3% and that, for 2008, the wage rates thus established be increased by an additional 3%.

Decision and Award.

Both parties make arguments relating to the finances of the Employer. The Union argues that the Employer has sufficient revenues, tax capacity and fund balances to pay the increases sought by the Union, and the Employer argues that the percentage increases sought by the Union, if provided to other employees, would be expensive and unjustified. Nothing in this evidence indicates that the Employer's financial status should be a determining factor in my decision about wages. As the Union argues, the Employer does not lack the ability to pay the increases it seeks, but mere ability to pay should not determine the appropriate wage rates. Other criteria must be the drivers of my decision about wages.

Similarly, the parties make arguments about the effect of my award on the Employer's compliance with the Local Government Pay Equity Act, Minnesota Statues, Sections 471.991 to 471.999. I note that, as the Union argues, an award of the Union's position could be made without causing the Employer to be out of compliance with the requirements of the Pay Equity Act, but I also note the Employer's argument that its employees who are to receive 3.0% per year would consider an award of more than twice that percentage per year to be inequitable.

In October of 2004, a consultant retained by the Employer completed a study that recommended appropriate compensation "benchmarks" for the job classifications used by the Employer (the "Pay Plan"). The benchmarks were derived from a study of the compensation paid by twelve Minnesota cities -- Alexandria, Brainerd, Cloquet, East Grand Forks, Fairmont, Fergus Falls, Hutchinson, Marshall, New Ulm, Thief River Falls, Virginia and Worthington. In 2005, the Employer adopted and applied the Pay Plan to its non-union employees.

The Employer and the IUOE have agreed to the terms of a new labor agreement covering the Employer's thirty-one Public Works employees. In that agreement, which has a three-year duration (calendar years 2007 through 2009), they agreed that the Public Works employees would be placed on the previously non-union Pay Plan. Because of several adjustments made with respect to particular Public Works job classifications, the resultant percentage increase in wages to Public Works employees equals 3.1% for 2007 -- though the rates within the Pay Plan itself were increased by 3.0% for 2007. The Public Works labor agreement establishes a further 3.0% wage increase for 2008 (and an additional 3% for 2009). The Employer anticipates that for 2008 the Pay-Plan will also provide non-union employees a 3.0% wage increase (and an additional 3% increase for 2009).

The Employer has agreed with the UFCW that the two full-time liquor store employees will receive a 3.0% increase in 2007, a 3% increase in 2008 and another 3% increase in 2009. Part-time employees will receive a 2.5% increase. As noted above the Employer has not yet concluded a new labor agreement with the IAFF or one with the Union that covers the Patrol Unit.

The Employer makes the following primary arguments. Its proposal to increase wages by 3% in each year of the new labor agreement follows the pattern it has established for its other employees. The thirty-two non-union employees and the two liquor store employees will receive increases of 3% per year for 2007 and 2008 (and for 2009). The thirty-one Public Works employees will receive a 3.1% increase in 2007 and increases of 3% per year in 2008 and 2009. Thus, it has already been determined that sixty-five of the Employer's 100 employees will receive increases of about 3% per year, the same amount that the Employer has offered to the Patrol Unit and the IAFF Unit and, here, to the Sergeants' Unit. The Employer argues that internal consistency should be the primary consideration in resolving the parties' impasse about wages.

In addition, as noted above, the Employer argues that an award here of percentage increases that are more than twice the percentage that most of its other employees have received will be regarded by those employees as inequitable and will cause its compliance with the Pay Equity Act to be distorted, even if such an award would not result in a failure of compliance.

The Employer presented evidence showing that the Consumer Price Index, U.S. City Average ("CPI"), compiled by the United States Bureau of Labor Statistics ranged between an annual rate of 2.1% to 2.8% in the first four months of 2007 -- a decline from the 3.2% increase for all of 2006. The Employer argues that, under its proposals, the rise in the cost of living will be offset not only by its proposed 3% wage increase, but, additionally, by the increase it proposes in its contribution to the cost of insurance and other benefits, as discussed below.

The Union makes the following primary arguments. An award of its proposal -- 6.5% for 2007 and an additional 6.5% for 2008 -- will not increase the Employer's costs substantially. Even assuming that all of the five members of the bargaining unit were at the top of the schedule (two are not), an increase of 6.5% for 2007 would raise monthly wages by 278.77 resulting in a total annual cost increase of $16,726 for the entire bargaining unit. An award of the Employer's proposal for 2007, a 3% increase, would raise monthly wages by $128.66 resulting in a total annual cost increase of $7,720. Thus, the difference between the cost of the Employer's proposal for 2007 and that of the Union is $9,006. For 2008, the total cost of an additional 6.5% increase would be $17,813. An increase of 3% in each year, as the Employer proposes, would increase costs for 2008 by $7,952. Thus, the difference between the cost of the Employer's proposal for 2008 and that of the Union is $9,861. For the two years, the cost difference between two 6.5% increases and two 3% increases would be $18,867.

The Union argues that there is no substantial pattern of wage increases that would support the Employer's argument for internal consistency. It regards the settlement with the UFCW as having diminished significance because it affects only two full-time employees and the increases to non-union employees as not significant because the amount was determined unilaterally by the Employer. The Union argues that bargaining with the IAFF about the Fire Fighters contract and with the Union about the contract covering the Patrol Unit cannot indicate a pattern of internal consistency in wage increases because those contracts are not settled.

The Union argues that a proper consideration of the cost of living should look back more than one year. It notes that members of the Sergeants' Unit have lost ground to the cost of living over the past ten years, with wage increases that on average have trailed the CPI -- notably in 2004 when they received no increase, while the CPI rose 2.4%. The Union rejects the Employer's argument that the Employer's proposed increase of its contribution to insurance and other benefits should be regarded as an additional offset to the rise in the cost of living -- noting that the insurance cost increase to employees will exceed the increase that the Employer proposes, thus eroding whatever wage increase may be awarded.

The Union argues that members of the bargaining unit are underpaid when a comparison is made between their wages and the wages that Sergeants in other jurisdictions receive. The Union suggests, as an appropriate comparison group, the eleven cities that were used to determine benchmarks when the Pay Plan was adopted in 2004 -- Alexandria, Brainerd, Cloquet, Fairmont, Fergus Falls, Hutchinson, Marshall, New Ulm, Thief River Falls, Virginia and Worthington. In 2006, those cities paid Police Sergeants the following top wage rates:

City	Monthly Wage
Alexandria	$4,364
Brainerd	4,631
Cloquet	4,018
Fairmont	4,515
Fergus Falls	4,854
Hutchinson	5,649
Marshall	4,765
New Ulm	4,660
Thief River Falls	4,040
Virginia	3,692
Worthington	5,358
Average	4,595
Bemidji	4,289

I note that the information presented by the Union shows that the wage rate at Hutchinson increased from $4,444 in 2005 to $5,649 in 2006, an increase of 27.1%. If this extraordinary increase to $5,649 is taken out of the computation, the average for the ten remaining cities is $4,490.

The Union argues that, when the Employer sought to fill a vacancy in its City Engineer's position, it used a different grouping of six employers -- Brainerd, Fergus Falls, Grand Rapids, Mankato, Moorhead and Beltrami County -- the county for which Bemidji is the county seat. The 2006 average monthly wage paid to Sergeants in those jurisdictions was $4,724. The Union argues that the monthly top wage rate paid to Sergeants in the Beltrami County Sheriff's Department, $4,741, is especially relevant because Beltrami County and the City share a law enforcement center, where the Sergeants from each jurisdiction are often in contact with each other.

The Employer suggests a different comparison group, which it refers to as the Coalition of Greater Minnesota Cities -- Alexandria, Brainerd, Detroit Lakes, Fergus Falls, Thief River Falls and Virginia. The Employer presented a document showing that the 2006 average top monthly wage rate for Sergeants for five of those six cities, omitting Fergus Falls from the computation, is $4,183. The document provides the 2007 wage rates in four of those five cities, an average of $4,403. This information does not include Fergus Falls, which paid $4,854 in 2006.

The Union argues that, since 1993, the wages of Sergeants have increased at a slightly lower rate than the wages of Police Officers. Since 1991, there have been five years when the

Patrol Unit received a slightly larger percentage increase than the Sergeants' Unit and one year when the Sergeants' Unit received a slightly larger increase; during the other ten years in that period, the percentage increase for each unit was the same. This history shows that the wage premium for Sergeants has declined from a little over 13% to a little under 11%.

For the following reasons, I award a 3.5% increase in 2007 and an additional 3.5% increase in 2008. I recognize that adherence to an internally consistent pattern of wage increases can provide stability in an employer's relations with diverse groups of employees. Here, however, as the Union argues, wage rates in comparable cities justify a departure from that pattern. The departure from the pattern is also justified by the evidence showing that compensation to the Sergeants when compared to that of the Police Officers has eroded over time. Further, the evidence shows that the award will have no significant effect on the Employer's financial condition or on its compliance with the requirements of the Pay Equity Act.

ISSUE 5: EMPLOYER'S BENEFIT CONTRIBUTION FOR 2007.
ISSUE 6: EMPLOYER'S BENEFIT CONTRIBUTION FOR 2008.

Section 14.1 of the current labor agreement is set out below:

> Local 227 agrees to participate in the VEBA Health Plan established by the City effective January 1, 2004. Local 227 also agrees to the appointment of the trustee and plan administrator adopted by the City. The Employer shall pay administrative fees allocable to individual accounts of active employees. Employer will make monthly contributions to individual accounts under the Health Reimbursement Arrangement (VEBA) for qualifying employees in this bargaining unit in the monthly amount of $50.

Employer will make monthly contributions towards the cost of health and other benefits to each eligible member of the bargaining unit in the amount of $538 ($588 less the above VEBA contribution amount). For 2005 and 2006, the Employer agrees to contribute up to $40 additional dollars each year towards the increased cost of benefits including health, life, disability, and other benefits offered by the City for regular employees and their dependents. If the increase is "excessive" meaning the employee's share of the increase is greater than $40, the City agrees to allow the Union to "reopen" this issue.

Thus, during 2006, the Employer's total monthly contribution for each member of the bargaining unit to health insurance and other benefits -- to be selected by each employee in a "cafeteria" plan -- was $668.00, including the Employer's contribution of $50.00 per month to the Variable Employee Benefit Association ("VEBA"). For medical and hospitalization insurance, the Employer participates in a cooperative of mostly public employers -- the Northwest Service Cooperative -- which purchases insurance from insurance carriers. For 2007, the Cooperative has increased the premiums charged to the Employer by 25% above the premiums charged in 2006.

Currently, none of the five members of the bargaining unit has selected health insurance coverage for himself and his family ("family coverage"), one has selected coverage for himself and his spouse ("single-and-spouse coverage"), while each of the other four has selected coverage for himself only ("single coverage"). For 2007, the single-and-spouse coverage premium charged by the Cooperative increased by 25% from $750 per month to $937.50 per month; the single coverage premium charged by the Cooperative also increased by 25% -- from $325 per month to $406.50 per month. Employees who do not use all of the Employer's monthly benefit contribution described in Section

14.1 for the purchase of insurance and other benefits receive the unspent part of the contribution as additional income.

<u>The Employer's Position</u>.

In the following statement of the Employer's position, I have used brackets to set off the text that relates to 2009, the proposed, but not awarded, third contract year; the Employer proposes that the new labor agreement amend the previous text of Section 14.1 to provide:

> Local 227 agrees to participate in the VEBA Health Plan established by the City. Local 227 also agrees to the appointment of the trustee and plan administrator adopted by the City. The Employer shall pay administrative fees allocable to individual accounts of active employees. Employer will make monthly contributions to individual accounts under the Health Reimbursement Arrangement (VEBA) for qualifying employees in this bargaining unit in the monthly amount of $50. Employer will make monthly contributions towards the cost of health and other benefits to each eligible member of the bargaining unit in the amount of seven hundred thirty-eight dollars ($738) inclusive of the VEBA contribution. This amount will increase by forty dollars ($40) in 2008 [and an additional forty dollars ($40) in 2009].

<u>The Union's Position</u>.

For 2007, the Union proposes that the Employer's total monthly contribution under Section 14.1 be increased to $788 per employee, including a $50 per month VEBA contribution. For 2008, the Union proposes that the Employer's total monthly contribution under Section 14.1 be increased by an additional $40 per employee to $828, including a $50 per month VEBA contribution. For 2009, if a three-year duration were awarded, the Union proposes that the Employer's total monthly contribution under Section 14.1 be increased by an additional

$40 per employee to $868, including a $50 per month VEBA contribution. The Union also proposes retention of the last sentence of Section 14.1 of the current labor agreement:

> If the increase is "excessive" meaning the employee's share of the increase is greater than $40, the City agrees to allow the Union to "reopen" this issue.

From the Union's presentation at the hearing, I understand its proposal to mean that in 2008, it could reopen bargaining if the employee's share of the cost of benefits increases by more than $40 per month and that, similarly, if a third year of the contract term were awarded, it could reopen bargaining in 2009 if the employee's share of the cost of benefits increases by more than $40 per month.

Decision and Award.

The Employer argues that internal comparison and internal uniformity should be the primary considerations when determining what the Employer's benefit contribution should be. The Employer argues that, except for the three bargaining units with unsettled labor agreements -- this unit, the Patrol Unit and the IAFF Unit -- its other employees will receive the same benefit contributions the Employer proposes here (though I note that the Union has represented that the two liquor store employees receive $100 per month more). The Public Works employees receive the same contribution, but they do not participate in the purchase of health and hospitalization insurance through the Cooperative; instead, they purchase such insurance through a plan operated by the IUOE.

Though the Union acknowledges that internal uniformity is the primary standard used in interest arbitration to determine insurance and other benefits, it urges that several good reasons exist to depart from that standard here. It argues that the two liquor store employees receive $100 per month more than what the Employer proposes, and that the Public Works employees, though receiving the same contribution, participate in a lower cost health insurance program, thus negating the Employer's argument from uniformity. The Union also argues that the lack of participation in family coverage is caused by its great expense ($1,203 per month in 2007) and that a larger benefit contribution to employees would increase participation in family coverage and through broader participation cause premiums for such coverage to decline.

The Union also argues that strict adherence to internal uniformity in determining benefits undermines the bargaining process, effectively ceding to employers the right to determine benefits as they impose them unilaterally on non-union employees and then seek acceptance of the same benefits from other bargaining units. In addition, the Union argues that the existence of the last sentence of Section 14.1 in the current labor agreement is a necessary contradiction of uniformity because it contemplates possible reopening of bargaining about the Employer's benefit contribution.

The Union also argues that the Employer's history of providing health insurance through very expensive carriers and offering increases in wages and benefit contributions that do not keep up with those extraordinary costs has eroded the spending power of bargaining unit employees.

I award the position of the Employer -- except for the language that relates to 2009. Though the amount of the benefit contribution has not been determined for all of the City's employees, it has been determined for at least sixty-three of them -- a significant majority. Internal consistency is the almost universal standard used in interest arbitration to determine health insurance benefits and other benefits. The Union argues that internal consistency is lacking here, but most of the employees of the City will have substantially the same benefit contribution proposed here by the Employer. I do not award the reopening sentence proposed by the Union, but, as I have described above, the volatility of the cost of health insurance has influenced my award of a two-year contract duration rather than one of three years.

ISSUE 8: UNIFORMS -- ALLOWANCE FOR 2007.
ISSUE 9: UNIFORMS -- ALLOWANCE FOR 2008.
ISSUE 10: UNIFORMS -- ALLOWANCE FOR 2009.
ISSUE 11: UNIFORMS -- FURNISH IN KIND RATHER THAN MONETARY ALLOWANCE.
ISSUE 12: UNIFORMS -- AMMUNITION: AMEND SECTION 15.2.

The six sections of Article XV of the current labor agreement are set out below:

15.1. The Employer will provide all employees with an annual uniform allowance of five hundred fifty ($550.00) dollars in 2004, five hundred sixty ($560.00) dollars in 2005, and five hundred seventy ($570.00) dollars in 2006.
15.2. The Employer shall furnish two (2) boxes of service ammunition for each sworn police officer

each month, for use in target practice and in the line of duty.

15.3. The Employer shall cover all costs to repair or replace uniform items, glasses or contact lenses damaged or destroyed in the line of duty.

15.4. The Employer shall pay up to $25.00 for repair or replacement of watches damaged in the line of duty.

15.5. Body Armor. The Employer agrees to provide all employees with body armor, including vests and to provide for the replacement of all body armor when it has reached the end of the manufacturer's recommended life span. The Employer reserves the right to determine the brand or type of body armor to be purchased.

15.6. The Employer shall provide up to $150.00 per year reimbursement for paid bills for eye glasses and exams for the employee only.

The Employer's Position.

The Employer proposes that the new labor agreement amend Section 15.1 by deleting all of its current language and replacing it with the following:

> 15.1. The Employer will provide an initial set of uniforms for new employees and employees who have not previously been issued uniforms. For all other current employees and subsequent to initial issue, uniform replacement will be made by the Employer on a "need" basis. Members of the unit filling positions requiring a licensed peace officer upon reaching permanent status will be required to have appropriate uniforms available at all times.

In addition, the Employer seeks the amendment of Section 15.2 of the labor agreement, to provide:

> 15.2. The Employer shall furnish ammunition for each sworn police officer, for use in target practice and in the line of duty as determined by the Police Chief.

As I interpret the Employer's position with respect to uniforms, it does not propose any change in the text of Sections 15.3, 15.4, 15.5 or 15.6.

The Union's Position.

The Union opposes the amendments sought by the Employer of Sections 15.1 and 15.2. It proposes that the new labor agreement continue the language of Section 15.2 without change. It proposes that the language of Section 15.1 be continued without change except that the amount of the uniform allowance be increased to $585 per year in 2007 and to $600 per year in 2008. As I interpret the Union's position with respect to uniforms, it does not propose any change in the text of Sections 15.3, 15.4, 15.5 or 15.6.

Decision and Award.

The Employer makes the following arguments. The cash allowance system established in the current labor agreement by Section 15.1 does not provide the City with any input into decisions about the replacement and upkeep of uniforms. The "need" based system of providing uniforms when needed, in the view of management, would allow control of those decisions. Though the contract covering the Patrol Unit also provides for a uniform allowance in cash, the Employer has proposed in a pending interest arbitration to change that contract to a "need" based system. There is a trend toward providing uniforms through a "need" based system among other cities; five of ten comparable cities use that system, while only three use cash payment for uniform allowance.

The Employer proposes to change Section 15.2 of the labor agreement, which now requires that "service" ammunition be supplied rather than the less expensive ammunition that could serve as well in target practice. It argues that the requirement to furnish two boxes a month of service ammunition rather than less expensive ammunition costs the Employer $234 per year per employee, whereas the provision of less expensive ammunition, as permitted by a provision in Section 15.4 of the labor agreement covering the Patrol Unit, would cost only $158 per year per employee.

The Union argues that "need" based systems of providing uniforms, which place the decision whether a replacement is needed outside the control of the employee, do not work because management may for financial reasons or through inaction, not provide replacements that the employee properly views as needed. The Union argues that the average cash uniform allowance in Minnesota is $620 for 2007 and will be $650 for 2008, though information for that year is incomplete. It argues that since 2000, the allowance has been increased by either $10 or $15 per year, both for the Sergeants' Unit and for the Patrol Unit.

The Union argues that the Employer's proposal to change Section 15.1 by eliminating the cash allowance for uniforms is a substantial change in the labor agreement -- one that should not occur as a result of arbitration, but through the give and take of bargaining. The Union argues that the Employer's proposal to amend Section 15.2 of the current labor agreement is also an attempt to accomplish a substantial change in an existing benefit without providing a quid pro quo in negotiation.

I award no change in Section 15.1 of the labor agreement except that the amount it specifies for the annual uniform allowance will increase from $570 to $580 in 2007 and then to $590 in 2008. I agree with the Union that the change to a "need" based system of providing uniforms would be a substantial change that should occur through the give and take of bargaining. For the same reason, I do not award the Employer's proposed change in Section 15.2. If the benefit it provides is to be reduced or eliminated, the change should come through bargaining.

ISSUE 13: COMPENSATION FOR STAND-BY TIME.

Article XIII of the current labor agreement is set out below:

> Employees required by the Employer to stand by shall be paid for such stand-by time at the rate of one hour's pay for each hour on stand-by.

The Employer's Position.

The Employer proposes that the new labor agreement amend Article XIII to provide:

> Employees required by the Employer to stand by shall be paid for such stand-by time at the rate of two hours at time and one-half for each eight hours on stand-by.

During the hearing, the Employer explained that its proposal should be interpreted so that, for periods of stand-by less than eight hours, compensation for being on stand-by would be pro-rated -- for example, that compensation for being placed on stand-by for four hours would be one hour's pay at time and one-half.

The Union's Position.

The Union opposes the change sought by the Employer.

Decision and Award.

The Employer argues that the stand-by language in the current labor agreement effectively prevents the use of Sergeants for stand-by. It argues that its proposal would obtain approximate parity with similar language in Section 8.4 of the current labor agreement covering the Patrol Unit -- which provides that "an employee requested to be on call or stand-by for court shall be paid two (2) hours at one and one-half times (1-1/2) their regular straight time hourly rate of pay." Very few other jurisdictions have hour-for-hour stand-by pay, similar to what is required by Article XIII.

The Union showed that six jurisdictions in the Minneapolis-St. Paul suburbs have such a provision. The Union argues that the Employer has offered nothing in bargaining to change this provision and that such a provision should not be changed in arbitration without compelling reasons and substantial evidence supporting those reasons.

I award the position of the Union. I do not award the change in Article XIII sought by the Employer because reduction of a previously bargained benefit should not be imposed in arbitration without a showing of substantial inequity. The reduction of such a benefit should be made in the manner the benefit was created -- by the bargaining of the parties.

July 20, 2007

Thomas P. Gallagher, Arbitrator